U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: Manila Date: JAN 31 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

FOR Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the Assistant Officer in Charge, Manila, Philippines, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected and the matter will be remanded for further action.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States by a consular officer under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or misrepresentation on February 12, 1999. The applicant was removed from the United States on February 13, 1999 under the provisions of § 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1). Therefore, she is also inadmissible under § 212(a)(9)(A)(i) of the Act, 8 U.S.C. 1182(a)(9)(A)(i). The applicant is married to a U.S. citizen seeks a waiver of the permanent bar under § 212(i) of the Act, 8 U.S.C. 1182(i) to join her spouse in the United States.

The applicant arrived at Los Angeles International Airport from Tokyo on February 12, 1999 and applied for admission as a nonimmigrant visitor using another person's passport and identity. The applicant was ordered removed under § 235(b)(1) of the Act.

On appeal the applicant states that denial of her application will impose extreme hardship on herself and on her husband. The applicant states that the separation is terribly stressful. The applicant states that her only desire is to be with her husband.

The acting officer in charge denied the application on the ground that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(9) ALIENS PREVIOUSLY REMOVED.-

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under § 235(b)(1) [1225]

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> or at the end of proceedings under § 240 [1229a] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible...
>
> (iii) EXCEPTION.-Clause (i)...shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and became effective on April 1, 1997.

The record reflects that the applicant was ordered removed under § 235(b)(1) of the Act, and as a result, she requires permission to reapply for admission.

Service instructions at O.I. 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The present record contains a Form I-212 application which has not been adjudicated and the applicant has not remained outside the United States for five consecutive years since the date of deportation or removal as required by 8 C.F.R. 212.2(a).

Therefore, since the Form I-212 application has not been adjudicated first and approved in this instance, the appeal of the acting officer in charge's decision denying the Form I-601 application will be rejected and the record remanded so that the acting officer in charge may adjudicate the Form I-212 application first, or provide evidence for the record that a decision has already been made on the Form I-212.

If the acting officer in charge approves the Form I-212 application or provides evidence that such application has been approved, the record of proceeding shall be certified to the Associate Commissioner for review and consideration of the appeal regarding the Form I-601 application. However, if the acting officer in charge denies the Form I-212 application or provides evidence that such application has been denied, that decision shall be certified to the Associate Commissioner for review, the Form I-601 application shall be rejected and the fee shall be refunded.

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ORDER: The appeal is rejected. The decision of the acting officer in charge is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.